

Wisconsin PACE Enabling Laws

Wis. Stat. Ann. § 93.73
Current through the 2019 Regular Session

93.73 Purchase of agricultural conservation easements.

(1) **Legislative findings.** The legislature finds all of the following:

(a) That the preservation of farmland is important for current and future agricultural production in this state, including the production of food and other products needed to sustain the life, health, and welfare of the people of this state.

(b) That the preservation of farmland is important for the current and future state economy and for the current and future environment of this state.

(c) That purchases of agricultural conservation easements, as provided in this section, serve important public purposes of statewide significance.

(1m) **Definitions.** In this section:

(a) "Agricultural conservation easement" means a conservation easement, as defined in s. 700.40 (1) (a), the purpose of which is to assure the availability of land for agricultural use.

(b) "Agricultural use" means any of the following:

1. Any of the following activities conducted for the purpose of producing an income or livelihood:

a. Crop or forage production.

b. Keeping livestock.

c. Beekeeping.

d. Nursery, sod, or Christmas tree production.

e. Floriculture.

f. Aquaculture.

g. Fur farming.

h. Forest management.

i. Enrollment of land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

2. Any other use that the department, by rule, identifies as an agricultural use.

(c) "Cooperating entity" means a political subdivision or nonprofit conservation organization.

(d) "Fair market value" means value as determined by a professional appraisal that is approved by the department.

(dm) "Livestock" means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

(e) "Nonprofit conservation organization" means a nonstock corporation, charitable trust, or other entity whose purposes include the acquisition of property for conservation or agricultural preservation purposes, that is described in section 501 (c) (3) of the Internal Revenue Code, that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code, and that is a qualified organization under section 170 (h) (3) of the Internal Revenue Code.

(f) "Political subdivision" means a city, village, town, or county.

(g) "Professional appraisal" means an appraisal conducted by a certified general appraiser, as defined in s. 458.01 (8).

(h) "Purchase cost" means the amount paid to a landowner to acquire an agricultural conservation easement from the landowner.

(i) "Transaction costs" means out-of-pocket expenses incurred in connection with the acquisition, processing, recording, and documentation of an agricultural conservation easement, including out-of-pocket expenses for land surveys, land descriptions, real estate appraisals, title verification, preparation of legal documents, reconciliation of conflicting property interests, documentation of existing land uses, and closing. "Transaction costs" does not include costs incurred by a cooperating entity for staffing, overhead, or operations.

(2) Program.

(a) The department shall administer a program under which it, together with cooperating entities, purchases agricultural conservation easements from willing landowners. The department may pay as its share of the cost to purchase an agricultural conservation easement under this section an amount that does not exceed the sum of the following:

1. Fifty percent of the fair market value of the agricultural conservation easement.
2. The reasonable transaction costs related to the purchase of the agricultural conservation easement.

(am) The willingness of a landowner to convey an agricultural conservation easement for less than full market value does not reduce the amount that the department may pay as its share of the cost to purchase the agricultural conservation easement.

(b) The department, after consultation with the council under sub. (13), shall solicit applications under sub. (3). The department shall issue each solicitation in writing and shall publish a notice announcing the solicitation. In soliciting applications, the department may specify the total amount of funds available, application deadlines, application requirements and procedures, preliminary criteria for evaluating applications, and other relevant information.

(3) Application. A cooperating entity may apply to participate in the program under this section by submitting an application that complies with requirements contained in the department's solicitation under sub. (2) (b) and that contains all of the following:

- (a) Identifying information for the cooperating entity, including information showing that the cooperating entity is a political subdivision or nonprofit conservation organization.
- (b) A description of the land that would be subject to the proposed agricultural conservation easement, including location, acreage, and current use.
- (c) The name and address of each owner of land that would be subject to the proposed agricultural conservation easement.
- (d) Evidence that all of the owners under par. (c) are willing to convey the proposed agricultural conservation easement.
- (e) An indication that the cooperating entity is willing to arrange the purchase of the proposed agricultural conservation easement in accordance with this section and share in the purchase cost, subject to reimbursement under sub. (9) of the department's agreed upon share of the costs.
- (f) The purpose of and rationale for the proposed agricultural conservation easement.

(g) Information needed to evaluate the application using the criteria in sub. (4) and in the department's solicitation under sub. (2) (b).

(4) **Application evaluation criteria.** The department may not approve an application under sub. (3) unless all of the land that would be subject to the proposed agricultural conservation easement is in a farmland preservation area, as defined in s. 91.01 (16), and the department determines that purchase of the proposed agricultural conservation easement will serve a public purpose. In making this determination, the department shall consider all of the following criteria:

(a) The value of the proposed agricultural conservation easement in preserving or enhancing agricultural production capacity in this state.

(b) The importance of the proposed agricultural conservation easement in protecting or enhancing the waters of the state or in protecting or enhancing other public assets.

(c) The extent to which the proposed agricultural conservation easement would conserve important or unique agricultural resources, such as prime soils and soil resources that are of statewide importance or are unique.

(d) The extent to which the proposed agricultural conservation easement would be consistent with local land use plans and zoning ordinances, including any certified farmland preservation plans and zoning ordinances under ch. 91.

(e) The extent to which the proposed agricultural conservation easement would enhance an agricultural enterprise area designated under s. 91.84.

(f) The availability, practicality, and effectiveness of other methods to preserve the land that would be subject to the proposed agricultural conservation easement.

(h) The proximity of the land that would be subject to the proposed agricultural conservation easement to other land that is protected for agricultural use or conservation use and the extent to which the proposed agricultural conservation easement would enhance that protection.

(i) The likely cost-effectiveness of the proposed agricultural conservation easement in preserving land for agricultural use.

(j) The likelihood that the land that would be subject to the proposed agricultural conservation easement would be converted to nonagricultural use if the land is not protected by the proposed agricultural conservation easement.

(k) The apparent willingness of each landowner to convey the proposed agricultural conservation easement.

(5) **Preliminary approval of applications.** The department may give preliminary approval to an application under sub. (3) after evaluating the application under sub. (4) and consulting with the council under sub. (13). The department shall give its preliminary approval in writing. Approval of an application is contingent on the signing of a contract under sub. (6m).

(6) **Information related to proposed easement.** A cooperating entity that receives a preliminary approval under sub. (5) shall submit all of the following to the department:

(a) A copy of the proposed instrument for conveying the agricultural conservation easement.

(b) A professional appraisal of the proposed agricultural conservation easement, other than an appraisal obtained by an owner of the land that would be subject to the proposed agricultural conservation easement.

(c) A statement of the purchase cost of the agricultural conservation easement.

(d) An estimate of the transaction costs that the cooperating entity will incur in connection with the purchase of the proposed agricultural conservation easement.

(e) The record of a complete search of title records that verifies ownership of the land that would be subject to the proposed agricultural conservation easement and identifies any potentially conflicting property interests, including any liens, mortgages, easements, or reservations of mineral rights.

(f) Documentation showing to the satisfaction of the department that any material title defects will be eliminated and any materially conflicting property interests will be subordinated to the proposed agricultural conservation easement or eliminated.

(6d) **Second appraisal.** The department shall obtain its own independent appraisal of a proposed agricultural conservation easement for which the department has given preliminary approval under sub. (5) if the fair market value of the proposed agricultural conservation easement is estimated by the department to be more than \$350,000.

(6h) **Review by joint committee on finance.** The department may not enter into a contract under sub. (6m) with respect to the purchase of a proposed conservation easement if the department's share of the purchase costs and transaction costs would exceed \$750,000 unless it first notifies the joint committee on finance in writing of the proposal. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the department's notification that the committee has scheduled a meeting to review the proposal, the department may enter into the contract. If, within 14 working days after the date of the notification by the department, the cochairpersons of the committee notify the department that the committee has scheduled a meeting to review the proposal, the department may enter into the contract only upon approval of the committee. A proposal as submitted by the department is approved unless a majority of the members of the committee who attend the meeting to review the proposal vote to modify or deny the proposal.

(6m) **Contract with cooperating entity.** Subject to subs. (6d) and (6h), after a cooperating entity complies with sub. (6) and the department determines that the proposed instrument of conveyance complies with sub. (7), the department and the cooperating entity may enter into a written contract that specifies the terms and conditions of the department's participation in the purchase of the proposed agricultural conservation easement. The cooperating entity shall agree to pay the full purchase cost and the transaction costs related to the purchase of the proposed agricultural conservation easement, subject to reimbursement under sub. (9) of the department's agreed upon share of the costs.

(7) **Purchase of easement.** After a cooperating entity has entered into a contract under sub. (6m), the cooperating entity may, in accordance with the contract, purchase the agricultural conservation easement on behalf of the cooperating entity and the department if the agricultural conservation easement does all of the following:

(a) Prohibits the land subject to the agricultural conservation easement from being developed for a use that would make the land unavailable or unsuitable for agricultural use.

(b) Continues in perpetuity.

(c) Provides that the cooperating entity and the department, on behalf of this state, are both holders of the agricultural conservation easement.

(d) Prohibits any holder of the agricultural conservation easement other than the department from transferring or relinquishing the holder's interest without 60 days' prior notice to the department.

(e) Complies with any other conditions specified in the contract under sub. (6m).

(8) **Acceptance and recording of easement.** A cooperating entity that purchases an agricultural conservation easement under sub. (7) shall submit the agricultural conservation easement to the department for its acceptance. Upon acceptance by the department, the cooperating entity shall promptly record the agricultural conservation easement and acceptance with the register of deeds of the county in which the land subject to the agricultural conservation easement is located and shall provide to the department a copy of the recorded instrument conveying the agricultural conservation easement, certified by the register of deeds under s. 59.43 (1c) (i).

(9) **Payment.** The department shall reimburse a cooperating entity for the department's agreed upon portion of the purchase cost and transaction costs related to the purchase of an agricultural conservation easement after the cooperating entity does all of the following:

(a) Complies with sub. (8).

(b) Submits documentation showing that any material title defects have been eliminated and any materially conflicting property interests have been eliminated or subordinated to the agricultural conservation easement, as required by the contract under sub. (6m).

(c) Submits proof of the amount of the purchase cost and transaction costs that the cooperating entity has paid, consistent with the contract under sub. (6m).

(10) **Transfer or relinquishment of holder's interest.** The transfer or relinquishment of another holder's interest does not affect the department's interest in an agricultural conservation easement.

(11) **Enforcement of easement.** The department or any other holder of an agricultural conservation easement purchased under this section may enforce and defend the agricultural conservation easement.

(12) **Record of easements.** The department shall maintain a record of all agricultural conservation easements purchased under this section.

(13) **Council.** The department shall appoint a council under s. 15.04 (1) (c) to advise the department on the administration of this section.

(14) **Rules.** The department shall promulgate a rule, consistent with sub. (1m) (i), relating to allowable transaction costs for the program under this section.

History: 2009 a. 28; 2011 a. 32; 2015 a. 196.

<https://docs.legis.wisconsin.gov/statutes/statutes/93/73>